

ELECTION OF PROCEDURES FOR DISCRIMINATION COMPLAINTS

1. If you believe that you have been discriminated against because of race, color, religion, gender (to include sexual harassment), age, national origin, physical or mental handicap, or have been subjected to retaliation, restraint, interference, or coercion in conjunction with an equal employment opportunity matter and if the discrimination involves an employment matter subject to the control of the National Guard, you may have a choice of how to file your complaint and to have it resolved.

2. Your options are as follows:

a. If you are not a member of a bargaining unit covered by a union contract you must follow the EEO complaint procedures established by the Equal Employment Opportunity Commission (EEOC) as outlined in National Guard Regulation (AR) 690-600 / National Guard Regulation (AF) 40-1614 and governed by Title 29 Code of Federal Regulations Part 1614.

b. If you are a member of a bargaining unit covered by a union contract and if the negotiated grievance procedures in that contract do not prohibit the raising of allegations of discrimination, you may:

- (1) Follow the discrimination complaint procedures in paragraph 2a, above; or
- (2) Follow the negotiated grievance procedure in your union contract. If you elect this option, you may have the right to appeal to the EEOC the final decision of the Adjutant General, the arbitrator, or the Federal Labor Relations Authority.

3. If your complaint is a mixed case, that is, if it is the result of alleged discrimination or retaliation and involves an action which is appealable to the Merit Systems Protection Board (MSPB) you may have a third option. (National Guard Technicians have appeal rights to the MSPB in cases of: (1) failure to properly restore from military service, (2) failure to properly restore from injury, and (3) denial of within-grade increase for General Schedule personnel.) You may:

- a. Follow the discrimination complaint procedures in paragraph 2a, above; or
- b. Use the negotiated grievance procedure if you are a member of a collective bargaining unit, as outlined in paragraph 2b, above; or
- c. Appeal directly to the MSPB. If you choose this route, you may ask the EEOC to review the MSPB final decision.

4. Initially, you may choose only one of the above options; election of one automatically eliminated the availability of the others. Your election is made simply by filing in writing a formal EEO complaint after completing counseling, filing a written grievance through a negotiated grievance procedure, or filing an appeal with the MSPB. However, If the MSPB dismisses your appeal for jurisdictional reasons, you may then file the complaint under the EEO procedures.

5. The EEO counselor will explain each of these options to you. You may also review chapters 3 and 10 of volume II of National Guard Regulation (AR) 690-600 / National Guard Regulation (AF) 40-1614 that provide more details on your options. You may review that regulation by visiting your EEO counselor or State Equal Employment Manager.

6. If you have any other questions on this matter you may contact the State Equal Employment Manager, the Labor Management Relations Specialist in the Support Personnel Management Office, or your union representative.